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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,298	07/09/2003	Alfons Sieverding	302220	1297
30008	7590	03/30/2004	EXAMINER	
GUDRUN E. HUCKETT LONSSTR. 53 WUPPERTAL, 42289 GERMANY			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/604,298

**Applicant(s)**

SIEVERDING, ALFONS

**Examiner**

Andrea M. Valenti

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EP 65108 A1 to Berlitz in view of U.S. Patent No. 3,785,088 to Guarriello.

Regarding Claims 1 and 11, Berlitz teaches a stackable deep-drawn plastic plant pot container comprising: an at least slightly conical wall (Berlitz #32) and a bottom (Berlitz #14) connected to the conical wall (Berlitz #32), wherein the conical wall has a rim area (Berlitz #22 and 23) remote from the bottom, wherein the rim area is comprised of a first ledge (Berlitz #22) and a second ledge (Berlitz #24), located below the first ledge, wherein the rim area comprises an intermediate support area (Berlitz #21) having a first end connected to the first ledge (Berlitz #22) and having a second end connected to the second ledge (Berlitz #24), wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges, wherein the first and second ledges in a plan view onto the rim area, at least partially overlap (Berlitz Fig. 1), wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge.

Berlit is silent on the intermediate support area (Berlit #21) having a wave shape at least at one of the first and second ends. However, Guarriello teaches a plant pot container with an intermediate support area having a wave shape (Guarriello #18). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an aesthetic design feature to enhance consumer appeal or the artistic design of the container and does not present a patentably distinct limitation [*In re Seid*, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947)]. Also, it would have been obvious to one of ordinary skill in the art to modify the teachings of the added structural support as taught by Guarriello (Guarriello Col. 2 line 33-34).

Regarding Claim 2, Berlit as modified teaches the wave shape of the intermediate support area is a rectangular wave shape (Guarriello #18).

Regarding Claim 3, Berlit as modified teaches the wave shape forms divisions in the circumferential direction which are only insignificantly greater than dimensions of the intermediate support area (Guarriello #18).

Regarding Claim 4, Berlit as modified teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Guarriello #18).

Regarding Claim 5, Berlit as modified teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Guarriello Fig. 1).

Regarding Claim 6, Berlitz as modified teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Berlitz #24 and 22).

Regarding Claim 7, Berlitz as modified teaches the second ledge (Berlitz #24) has a contour matching the wave shape of the intermediate support area and overlaps in a plan view radially at least most of a radial width of the first ledge (Berlitz #22).

Regarding Claim 8, Berlitz as modified teaches the first ledge (Berlitz #22) of the rim area forms an upper flange rim (Berlitz #23).

Regarding Claim 10, Berlitz as modified teaches the upper flange rim has an outer downwardly bent edge (Berlitz #23).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EP 65108 A1 to Berlitz as applied to claim 8 above, and further in view of U.S. Patent No. 859,964 to Phorce-Smith.

Regarding Claim 9, Berlitz as modified is silent on the upper flange rim has a wall thickness that is greater than a wall thickness of remaining parts of the plastic container. However, Phorce-Smith teaches a plant pot rim with a greater thickness than the container thickness (Phorce-Smith Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice selected to enhance the strength of the rim to prevent undesirable bending when transporting a full/heavy container.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,291,493; U.S. Patent No. 4,715,144; U.S. Patent Des. 240,965; U.S. Patent Des. 202,507; European Patent EP 1110870A1; U.S. Patent Des. 2,253,817; and U.S. Patent Des. 235,909.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

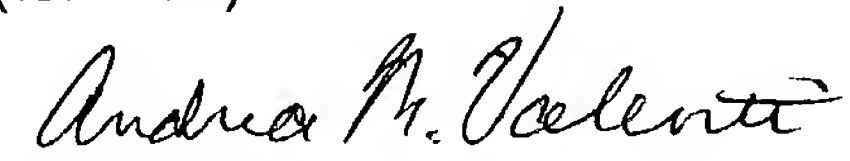
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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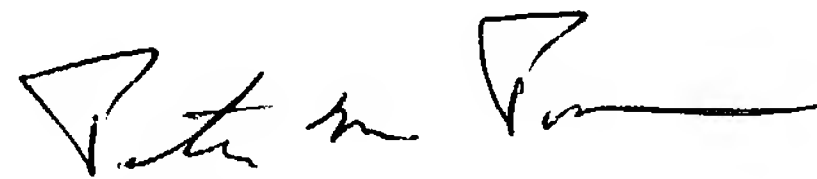
For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the  
Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Examiner  
Art Unit 3643

23 March 2004



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

3/24/04